

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of

Revision of the Commission's)	
Rules to Ensure Compatibility)	
with Enhanced 911 Emergency)	
Calling Systems)	CC Docket No. 94-102
)	
T-Mobile USA, Inc., Amended Request)	
For Limited Modification of E911 Phase II)	
Implementation Plan)	

OPPOSITION TO APPLICATION FOR REVIEW

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), pursuant to Section 1.115(d), 47 C.F.R. §1.115(d), of the Commission's rules, hereby submits the following Opposition to the Application to Review¹ filed by T-Mobile USA, Inc. ("T-Mobile") regarding a decision of the Wireless Telecommunications Bureau to dismiss its *Amended Request for Limited Modification of E911 Phase II Implementation Plan* and refer issues regarding its compliance obligations to the Enforcement Bureau for possible enforcement action.²

T-Mobile's *Application for Review* strains all credulity and is intended only to further delay deployment of E911's critical life-saving service. It diverts significant resources to a

¹ Application for Review of Order To Dismiss T-Mobile's Amended Request, CC Docket No. 94-102, filed January 13, 2003 ("*Application for Review*").

² Order To Dismiss T-Mobile's Amended Request, CC Docket No. 94-102, DA 02-3451, released December 13, 2002 (dismissing T-Mobile's Amended Request for Modification of E911 Implementation Plan, CC Docket No. 94-102, filed February 28, 2002 ("*Amended Request*").

discussion of the merits of T-Mobile's waiver requests, and amendments to amendments of previous waiver requests, rather than to effective resolution of the problem. While T-Mobile asserts that it merely needs more time to deploy its E-OTD solution, and that its interim efforts to deploy this system should be duly noted by the Commission, the rest of the industry has apparently concluded that E-OTD will never meet the Commission's E911 location requirements. The Wireless Bureau has taken the appropriate action to ensure that T-Mobile seeks a path to compliance instead of further delays caused by a proposed solution that has never fully materialized. The T-Mobile Application for Review should, therefore, be dismissed.

Background

When T-Mobile was granted its first waiver over two years ago, the Commission made clear that if T-Mobile could not implement its solution within the dates established by the order, T-Mobile would be expected to adopt an alternative technology that works.³ The Commission also noted that it expected further waiver requests to offer "*a clear path to full compliance.*"⁴ In December 2001, February 2002 and October 2002, T-Mobile again sought further modifications to its waiver, each time asserting that it was working diligently toward implementing its NSS/E-OTD solution which it characterized as "appear[ing] likely to meet Commission requirements."⁵

³ Fourth Memorandum Opinion and Order, FCC 00-326, released September 8, 2000, ¶ 45. The Commission stated that "Carriers should not expect to defer providing a location solution if one is available and feasible. If a carrier's preferred location solution is not available or will not fully satisfy the rules, in terms of accuracy and reliability or timing, the carrier would be expected to implement another solution that does comply with the rules."

⁴ *Id.* at ¶ 44 (emphasis added).

⁵ T-Mobile's October 2002 Semi-Annual Report, CC Docket No. 94-102, at page 3, October 1, 2002. In its latest request, T-Mobile merely noted that it was "evaluating its deployment schedule . . . and [would] file a further amendment to its *Amended Request for Limited Modification* in the near future." *Id.* at page 22.

Yet each waiver request merely sought further delay of previous deployment schedules and when viewed together do not evidence efforts which demonstrate *a clear path to full compliance*.

In the interim, the likelihood of E-OTD ever meeting the Commission's standards has come into question. Although T-Mobile reported last summer that, with the cooperation of the two other nationwide GSM carriers, it was working diligently to make E-OTD a viable solution, the other two nationwide carriers with GSM networks have largely abandoned E-OTD .

Discussion

For over two years, the Commission has waited patiently for GSM carriers to prove that E-OTD would meet the E911 requirements. As the Commission explained when it granted the very first E911 waiver to T-Mobile, "its [NSS/E-OTD] proposal represents a promising approach that may offer significant public safety benefits, *if it performs as expected*."⁶ More than two years later, E-OTD has not only failed to perform as expected, it has failed to perform -- period. Instead, the Commission has been faced with continuous requests for additional waivers, based on little more than aspirations that the technology will someday be a benefit to public safety. While we understand that the Commission must allow carriers some reasonable delay in their efforts to deploy a technologically complex, expensive system where it is warranted, it is now time for the Commission to take swift action to ensure that these carriers promptly deploy Phase II solutions that work.

In its *Application for Review*, T-Mobile essentially requests credit for meeting two of the three low hurdles it set for itself last February. T-Mobile asserts that the Commission should reinstate and review those portions of its *Amended Request* which it had already "complied

⁶ Fourth Memorandum Opinion and Order, at ¶ 57.

with.” Yet, T-Mobile was not in compliance with either the Commission’s rules or its previously authorized waiver. T-Mobile was only “in compliance with” two of the benchmarks it proposed in its *Amended Request* last February. Ignoring Commission requirements, setting individualized compliance goals and failing to meet those goals is not deserving of special accommodation.

The Wireless Bureau has taken the appropriate action in dismissing T-Mobiles *Amended Request* and referring issues regarding compliance to the Enforcement Bureau. T-Mobile’s efforts to deploy E-OTD have not proven to meet any of the Commission’s requirements. However, should the Enforcement Bureau determine that T-Mobile’s actions show a legitimate effort toward compliance and that it has taken its obligations seriously, those facts could be weighed by the Enforcement Bureau when it makes its penalty assessment for T-Mobile’s failure to comply.

Conclusion

The critical issue before the Commission is the deployment of E911 service. T-Mobile's assertions appear to be yet another attempt to delay E911 deployment and divert Commission resources to efforts that show no path to ultimate compliance. T-Mobile must be held accountable for meeting the Commission's requirements and delivering a workable E911 solution.

Respectfully Submitted,

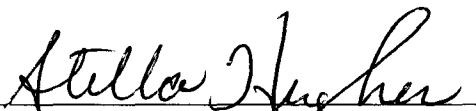
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January 28, 2003

CERTIFICATE OF SERVICE

I, Stella Hughes, hereby certify that a copy of the foregoing "Opposition to Application for Review" was served this 28th day of January 2003, by first class mail, postage pre-paid, to the following individual at the address listed below:

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